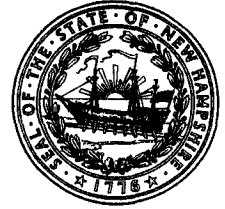




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Dartmouth College
Attn: Matthew Purcell, P.E.
63 South Main Street
Fleet Bank Building – 3rd Floor
Hanover, NH 03755

Re: McLaughlin Cluster, 2 Maynard Street,
Hanover, NH – DR No. D2005-0322

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 06-015**

April 18, 2006

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Dartmouth College, pursuant to RSA 485-A and NH Admin. Rule Env-C 600. The Division is proposing that fines totaling \$5,000 be imposed against Dartmouth College for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division (“the Division”), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Dartmouth College is legislatively chartered college of the State of New Hampshire with a principal office address of 63 South Main Street, Fleet Bank Building – 3rd Floor, Hanover, NH 03755; according to records kept by the New Hampshire Secretary of State’s Office.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 485-A:4 authorizes DES to regulate the standards of design and construction for sewerage and sewage or waste treatment systems through a fee-based review and permit system. Pursuant to rulemaking authority conferred therein, the Commissioner of DES has adopted Env-Ws 700 to implement this program.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 485-A:4-6, including any rule adopted thereunder. Pursuant to this section, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
3. Pursuant to RSA 485:8 and 485-A:4 engineering designs for new, renovated or extended sewerage facilities must be submitted to DES for review and approval action at least 30 days prior to construction, accompanied by a review fee based on design flow.

4. Env-Ws 702.01(b) requires that design drawings and technical specifications be submitted for any proposed sewer system which serves more than one building or which requires a manhole at the connection.
5. Env-Ws 706.08 (a)(2) requires that a sewer connection permit request be submitted for any proposed wastewater connection or other discharge in excess of 5,000 gallons per day.
6. Env-Ws 706.08 (c) requires that a permit review fee or design review fee in the amount stipulated in RSA 485-A:4 accompany the sewer connection permit request and applicable engineering plans.
7. Sewers, pumping stations and treatment facilities shall be constructed in accordance with approved design plans and specification. Pursuant to Env-Ws 704, any deviations from approved plans and specifications will be submitted for approval in accordance with the rules at least 30 days prior to the commencement of any construction work that would be affected by such changes.
8. On March 23, 2005, Pathways Consulting, LLC ("Pathways") submitted, on behalf of Dartmouth College, an application for Sewer Connection Permit with a \$50 check for the review fee, associated with proposed sewer service for new residential housing on campus know as the McLaughlin Cluster.
9. Pursuant to RSA 485-A:4, the review fee due, based on the estimated number of gallons in the proposed discharge, was \$2,673.80.
10. On March 28, 2005, DES put Pathways on notice that an additional \$2,623.80 was due prior to DES reviewing the submittal. The notice indicated that review and approval was required prior to sewer installation.
11. As of July 1, 2005, DES had not received the review fee for this application, or issued any approvals or permits for construction. DES contacted Pathways to inquire about the application status. A Pathways representative stated that the sewer construction had been completed.
12. On July 6, 2005, DES received the \$2,623.80 design review fee from Pathways.
13. On July 18, 2005, after reviewing the application and plans DES staff requested additional information and notified Pathways and Dartmouth College of deficiencies in the application/plans.
14. DES subsequently received additional information and submittals from Pathways and approved connection from the project to the Hanover wastewater treatment facility on September 14, 2005.
15. Thereafter DES staff learned from town officials that the sewer installation at Dartmouth College had commenced prior to January 26, 2005.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINE(S)

1. Dartmouth College has violated RSA 485:8 and 485-A:4 by failing to submit plans and specifications and secure approval prior to commencing construction of the McLaughlin Cluster sewer system. For this violation, Env-C 603.03(a) specifies a fine of \$2,000.
2. Dartmouth College has violated Env-Ws 706.08 by failing to secure a sewer connection permit as required. For this violation, Env-C 603.03(b) specifies a fine of \$1,000.
3. Dartmouth College has violated RSA 485:8, 485-A:4 and Env-Ws 704 by failing to construct a sewer facility in accordance with approved plans and specifications. For this violation, Env-C 603.03(c) specifies a fine of \$2,000 per unapproved element.

The total fine being sought is \$5,000.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Dartmouth College is required to respond to this notice. Please respond no later than May 19, 2006 using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If you wish to discuss the possibility of settling the case, please sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** that you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.


COPY
Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Sharon Nall DES/WWEB Design & Review
cc: Gretchen Hamel, Legal Unit Administrator
Peter Kulbacki, P.E., Director of Public Works, Town of Hanover
Pathways Consulting, LLC

***** RETURN THIS PAGE ONLY *****

**DARTMOUTH COLLEGE IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN May 19, 2006

Please check the appropriate line and fill in the requested information below:

APPEARANCE On behalf of Dartmouth College:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Dartmouth College:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$5,000 paid to "Treasurer, State of New Hampshire" is enclosed. *

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2

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Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.